

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI

JOSEPH REED,

Plaintiff,

v.

WESTERN OIL, INC.

Defendant.

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Case No. 4:16-cv-423

**PLAINTIFF’S MOTION FOR PARTIAL SUMMARY JUDGMENT**

Plaintiff Joseph Reed, through Counsel, Andrea McNairy, and Brown & Crouppen, P.C., pursuant to Federal Rule of Civil Procedure 56, request that this Court enter partial summary judgment in his favor because there are no disputes of any material fact relevant to Plaintiff’s claim of negligence *per se* against the Defendant Western Oil, Inc. (“Western Oil” or “Defendant”). The Plaintiff is entitled to partial summary judgment for the following reasons:

The Plaintiff is suing the Defendant alleging common law negligence and negligence *per se* for the violation of the American Disabilities Act (“ADA”).

There are no material questions of fact regarding three of the four essential elements of the Plaintiffs’ claim for negligence *per se*. To establish a claim of negligence *per se* based on the violation of a statute or code, a plaintiff must prove the following four elements: (1) a violation of the statute or code; (2) the injured plaintiff was a member of the class of persons intended to be protected by the statute or code; (3) the plaintiff’s injury is of the type the statute or code was designed to prevent; and (4) the violation of the statute or code was the proximate cause of the injury. *See Blackwell v. CSF Properties 2 LLC*, 443 S.W.3d 711, 716 (Mo.App. E.D. 2014).

There are no genuine issues of material fact as to whether: (1) Western Oil violated applicable statutes and codes; (2) Joseph Reed was a member of the class of persons intended to be protected by the ADA; and (3) his injury is of the type the ADA was designed to prevent. As such, Plaintiff is entitled to partial summary judgment on three of the four essential elements of negligence *per se*, leaving for the jury the sole question of whether Western Oil's violations of the ADA proximately caused injury to Plaintiff.

In support of their Motion, the Plaintiff incorporates their Statement of Uncontroverted Material Facts, supporting exhibits, and Memorandum of Law in Support.

ACCORDINGLY, Plaintiff respectfully requests that this Court enter partial summary judgment in his favor and against the Defendant on three of the four elements of his claim of negligence *per se*, including any other relief this court deems necessary and proper in these circumstances.

BROWN & CROUPPEN, P.C.

BY: /s/Andrea D. McNairy  
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**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing was served on all counsel of record via the Court's electronic notification system on this 23<sup>rd</sup> day of August, 2017.

/s/ Andrea D. McNairy